

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: AIRPORT

AGENDA DATE: April 12, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña/780-4724

DISTRICT(S) AFFECTED: 2 and 3

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

This item is a Resolution to authorize the City Manager to sign a Lessor's Approval of Assignment by and between the City of El Paso (Lessor) and Cutter Aviation El Paso Limited Partnership, an Arizona limited partnership (Assignor) and Pak West Airlines, Inc., a Texas Corporation, d/b/a Sierra West Airlines (Assignee) for the following described property:

A 59,215.26 square foot parcel, more or less, being Lot 28, Block 4, and a portion of Boeing Drive, vacated in Volume 1028, Page 423, Real Property Records of El Paso County Texas, El Paso International Airport Tracts Unit 2, and Lots 29 and 30, Block 4, and a portion of Boeing Drive vacated in Volume 1028, Page 423, Real Property Records of El Paso County, Texas El Paso International Airport Tracts Unit 1, and municipally known and numbered as 7615 Boeing Drive, El Paso, Texas.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Cutter Aviation has entered into an agreement with current Sublessee, Pak West Airlines, Inc. d/b/a Sierra West Airlines to purchase the improvements on the premises. As a result, Cutter Aviation is requesting to assign the non-commercial aviation ground lease to Pak West Airlines, Inc.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

- Non-commercial Aviation Ground Lease for Cutter Beechcraft Corporation effective June 1, 1994 on May 24, 1994.
- Lessor's Approval of Sublease (Pak West Airlines, Inc. dba Sierra West Airlines) effective March 1, 2005 on May 17, 2005.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A - Revenue generating item

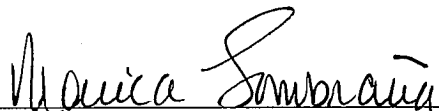
BOARD / COMMISSION ACTION: N/A

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)



Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Assignment by and between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited Partnership, an Arizona limited partnership ("Assignor"), and Pak West Airlines, Inc., a Texas corporation dba Sierra West Airlines ("Assignee") for the following described property:

A 59,215.26 square foot parcel, more or less, being Lot 28, Block 4, and a portion of Boeing Drive, vacated in Volume 1028, Page 423, Real Property Records of El Paso County Texas, El Paso International Airport Tracts Unit 2, and Lots 29 and 30, Block 4, and a portion of Boeing Drive vacated in Volume 1028, Page 423, Real Property Records of El Paso County, Texas El Paso International Airport Tracts Unit 1, and municipally known and numbered as 7615 Boeing Drive, El Paso, Texas.

ADOPTED this the ____ day of _____ 2011.

THE CITY OF EL PASO

John F. Cook
Mayor


ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Director of Aviation

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

This Lessor's Approval of Assignment is entered into this _____ day of _____, 2011 by and among the City of El Paso ("Lessor"); Cutter Aviation El Paso, Limited Partnership, an Arizona limited partnership ("Assignor"), and Pak West Airlines, Inc. a Texas Corporation d/b/a Sierra West Airlines ("Assignee").

WHEREAS, Lessor and Assignor entered into a Non-Commercial Aviation Ground Lease ("Lease"), with an effective date of June 1, 1994, for the following described leased premises:

Lot 28, Block 4, El Paso International Airport Tracts Unit 2, and Lots 29 and 30, Block 4, El Paso International Airport Tracts Unit 1, and an additional 7,115 square foot parcel in front of Lot 28, Block 4, El Paso International Airport Tracts Unit 2, and Lots 29 and 30, Block 4, El Paso International Airport Tracts Unit 1, all of which are depicted on **EXHIBIT "A"**, which is attached hereto and incorporated herein for all purposes and municipally known and numbered as 7615 Boeing Drive, El Paso, Texas;

WHEREAS, while reviewing the Lease, Lessor, Assignor and Assignee have discovered a variance between the square feet identified as the Premises in the Lease and the square feet occupied by Assignor; and

WHEREAS, the Lessor, the Assignor and Assignee acknowledged that the correct square footage currently occupied as the Premises under the terms and conditions of the Lease is described as follows:

A 59,215.26 square foot parcel, more or less, being Lot 28, Block 4, and a portion of Boeing Drive, vacated in Volume 1028, Page 423, Real Property Records of El Paso County Texas, El Paso International Airport Tracts Unit 2, and Lots 29 and 30, Block 4, and a portion of Boeing Drive vacated in Volume 1028, Page 423, Real Property Records of El Paso County, Texas El Paso International Airport Tracts Unit 1, being more particularly described by metes and bounds in Exhibit "B" which is attached hereto and incorporated herein for all purposes, and municipally known and numbered as 7615 Boeing Drive, El Paso, Texas.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Assignee, on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **RELEASE AND ASSUMPTION.** Assignor shall be released and discharged from all rights, privileges and obligations under the Lease arising from and after the effective date of the assignment of the Lease and Assignee shall, as of the effective date of the assignment, enjoy all rights and privileges and be responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee.
4. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
5. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignor shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNEE: Pak West Airlines, Inc. dba Sierra West Airlines
8191 Laughlin Road
Oakdale, CA 95361

ASSIGNOR: Cutter Aviation El Paso, Limited Partnership
Attn: Steve Prieser, VP, CFO
2802 E. Old Tower Road
Phoenix, AZ 85034-6000

6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of Assignor and Assignee represent and warrant that they have the authority legally to bind Assignor or Assignee, respectively, to the provisions of this Lessor's Approval of Assignment.

7. **NON-WAIVER.** This Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
8. **EFFECTIVE DATE.** The parties have executed this Lessor's Approval of Assignment hereto this 12th day of April 2011.

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2011,
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas**. (Lessor)

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ASSIGNOR: CUTTER AVIATION EL PASO, LIMITED PARTNERSHIP

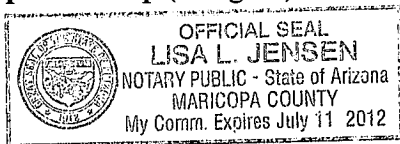
By: El Paso Aviation, L.L.C., an Arizona
limited liability Company
Its: General Partner

By: [Signature]
William W. Cutter
Its: Manager

ASSIGNOR'S ACKNOWLEDGEMENT

THE STATE OF Arizona)
COUNTY OF Maricopa)

This instrument was acknowledged before me on this 31st day of March, 2011,
by William W. Cutter, Manager of El Paso Aviation, L.L.C., an Arizona limited liability
company, General Partner of **Cutter Aviation El Paso, Limited Partnership, an Arizona
limited partnership** (Assignor).



My Commission Expires:
July 11, 2012

[Signature]
Notary Public, State of Arizona

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ASSIGNEE: Pak West Airlines, Inc. a
Texas corporation dba Sierra West Airlines

Printed Name: _____
Title: _____

ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF _____)
_____)
COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____,
2011, by _____ as _____ of **Pak West Airlines, Inc. a Texas
corporation dba Sierra West Airlines** (Assignee).

My Commission Expires:

Notary Public, State of _____



Exhibit - A

7615 Boeing Drive

Approximately 56,315 Sq. Ft.

Being Lots 28, Block 4, and a portion of Boeing Dr.
Vacated in Volume 1028, page 423, El Paso
International Airport Tracts Unit 2 and Lots 29
and 30, Block 4, and a portion of Boeing Dr.,
vacated in volume 1028, page 423,
El Paso International Airport Tracts Unit 1
City of El Paso, El Paso County, Texas
March 18, 2011

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 28, Block 4 and a portion of Boeing Dr., vacated in volume 1028, page 423, Real property records of El Paso County, Texas, El Paso International Airport Tracts Unit 2 and Lots 29 and 30, Block 4 and a portion of Boeing Dr. vacated in volume 1028, page 423, Real property records of El Paso County, Texas, El Paso International Airport Tracts Unit 1, as recorded in volume 18, page 30, Plat records of the City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found bridge nail at the centerline intersection of Boeing Dr. and Beech St. from which an existing brass disk city monument at the centerline intersection of Boeing Drive and Shuttle Columbia St. bears North $81^{\circ}10'07''$ East a distance of 1460.22 feet; Thence along the centerline of Boeing South $81^{\circ}10'07''$ West a distance of 1034.00 feet to a point; Thence leaving said centerline North $08^{\circ}49'53''$ West a distance of 34.00 feet to a set nail on the southerly line of a vacated portion of Boeing Dr. as recorded in Volume 1028, Page 423 Real property records of El Paso County, Texas for the "TRUE POINT OF BEGINNING";

Thence North $08^{\circ}49'53''$ West a distance of 200.00 feet to a set nail on the common line of Lots 27 and 28, Block 4, El Paso International Airport Tracts Unit 2;

Thence leaving said line North $81^{\circ}10'07''$ East a distance of 300.00 feet to a set $\frac{1}{2}$ " rebar with cap marked TX 5152 on the common line of Lots 30 and 31, Block 4, El Paso International Airport Tracts Unit 1;

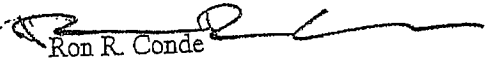
Thence along said line South $08^{\circ}49'53''$ East, passing a found nail with cap marked TX 2027 at a distance of 164.00 feet a total distance of 173.58 feet to a set chiseled V on curb;

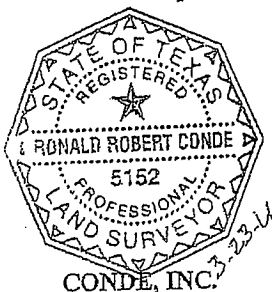
Thence leaving said line South $81^{\circ}06'54''$ West a distance of 10.76 feet to a set chiseled V on curb for a point of curve;

Thence 39.75 feet along the arc of a curve to the left which has a radius of 23.40 feet a central angle of $97^{\circ}20'05''$ a chord which bears South $32^{\circ}26'52''$ West a distance of 35.14 feet to a set chiseled V on concrete curb on the southerly line of a vacated portion of Boeing Dr. recorded in volume 1028, page 423, Real property records of El Paso County, Texas;

Thence along said line South $81^{\circ}10'07''$ West a distance of 266.05 feet to the TRUE POINT OF BEGINNING" and containing 59,215.2597 square feet or 1.3594 acres of land more or less.

NOTE: Bearings based on plat of El Paso International Airport Tracts Unit 11, as recorded in volume 71, page 29, Plat records of El Paso County, Texas.


Ron R. Conde
R.P.L.S. No. 5152
Job No. 311-13



ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283 FAX (915) 592-0286

NOTE:

1. A METES AND BOUNDS DESCRIPTION OF EVEN DATE ACCOMPANIES THIS SURVEY.
2. THIS SURVEY NOT INTENDED TO REFLECT ALL IMPROVEMENTS.

